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7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE DISTRICT OF ARIZONA  
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12 Christine Baker, )  
13 Plaintiff, ) No. CIV 03-525-PCT RCB  
14 vs. ) O R D E R  
15 Fair Isaac and Company, )  
16 et al., )  
17 Defendants. )

18 **I. Introduction**

19 On February 14, 2006, Defendant Verizon Wireless ("Verizon")  
20 filed a motion for summary judgment on all of Plaintiff Christine  
21 Baker's ("Baker") claims against it. Mot. (doc. 237).  
22 Thereafter, on March 15, 2006, Baker filed a motion requesting  
23 leave to file a First Amended Complaint. Mot. for Leave (doc.  
24 248). These motions were both fully briefed on April 5, 2006. P.  
25 Reply (doc. 266).<sup>1</sup> This Court, having carefully considered all the  
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27 <sup>1</sup>Oral argument is requested by at least one of the parties on  
28 each of these motions. Finding oral argument unnecessary, the Court  
shall deny such requests.

1 arguments presented by the parties, now rules.

2 **II. Background Facts**

3 On March 19, 2003, Baker brought various claims against  
4 twenty-seven defendants, including Verizon. Compl. (doc. 1).  
5 When Baker initially filed her Complaint, it was unclear exactly  
6 what claims she was asserting against Verizon. D. Resp. (doc. 257)  
7 at 2. Accordingly, Verizon served Baker with Interrogatories in  
8 which it asked Baker to list each cause of action she was asserting  
9 against Verizon. Id. at 2-3. In response, Baker stated that  
10 "Verizon committed fraud and attempted to extort monies NOT  
11 owed[.]" Exbt. A (doc. 257) at 1. Based on this response, Verizon  
12 filed a motion for summary judgment on the "fraud" and "extortion"  
13 claims. D. Resp. (doc. 257) at 3. Verizon's motion primarily  
14 asserts that the Court lacks subject matter jurisdiction over  
15 Baker's fraud and "extortion" claims; and, even if the Court had  
16 jurisdiction, Verizon would nevertheless be entitled to judgment as  
17 a matter of law. Mot. (doc. 237).

18 About a month after Verizon filed its motion for summary  
19 judgment, Baker filed a motion requesting leave to file an amended  
20 complaint. Mot. for Leave (doc. 248). Baker seeks to amend her  
21 Complaint by removing the parties that have already been dismissed  
22 from this lawsuit, and adding new claims against Defendants  
23 Experian and ConsumerInfo.com. Id. at 1-2. In addition, Baker  
24 seeks to add claims against Verizon for negligence and gross  
25 negligence, and claims under the Fair Debt Collection Practices Act  
26 ("FDCPA"). Id. at 2, 10.

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28

1 **III. Discussion**

2 **A. Baker's Motion for Leave to File First Amended Complaint**

3 Rule 15 states that leave shall be freely given to amend a  
4 complaint when justice so requires. Fed.R.Civ.P. 15. A plaintiff  
5 should be granted the freedom to amend their complaint unless the  
6 opposing party can show prejudice, bad faith, or undue delay.  
7 Forman v. Davis, 371 U.S. 178, 182 (1962). However, if the  
8 plaintiff's amendments would be futile, the court may, in its  
9 discretion, deny the Motion to Amend. Nunes v. Ashcroft, 375 F.3d  
10 805, 808 (9th Cir. 2004).

11 Here, Verizon asserts that Baker's motion to amend should be  
12 denied. D. Resp. (doc. 257). At the outset, Verizon argues that  
13 Baker's proposed amendments against it are futile. Id. at 4-9.  
14 First, Verizon asserts that it cannot be held liable under the  
15 FDCPA because (1) it is not a "debt collector" as defined by the  
16 statute; and (2) the relevant letters used as the basis for Baker's  
17 claim were sent by third-parties. Id. at 4-5. Second, Verizon  
18 argues that Baker lacks standing to assert claims under the FDCPA,  
19 because the relevant letters used as the basis for her claim were  
20 not addressed to her; thus, she is not a "consumer" as defined by  
21 the statute. Id. at 5-6. Third, Verizon maintains that Baker's  
22 claims are barred by the statute of limitations. Id. at 6.  
23 Fourth, Verizon argues that the Court lacks jurisdiction over  
24 Baker's "negligence" claims, because Baker is seeking only \$25,000  
25 in damages. D. Resp. (doc. 257) at 6-7. Fifth, Verizon contends  
26 that Baker's "negligence" claims fail to state a claim. Id. at 7-  
27 9.

28 In addition, Verizon argues that Baker's motion for leave to

1 amend her complaint should be denied, because her undue delay  
2 prejudices Verizon and the motion is made in bad faith. Id. at 9-  
3 12. Lastly, Verizon asserts that the Court should deny Baker's  
4 motion, because it fails to comply with Local Rule 15(C). Id. at  
5 12-13.

6 Baker fails to respond to any of Verizon's arguments, except  
7 for the allegations that her motion was made in bad faith and  
8 failed to comply with Local Rule 15(C). P. Reply (doc. 266). In  
9 explanation of her failure to respond to Verizon's other arguments,  
10 Baker states,

11 ...[m]ost of Verizon's 14 page filing would be  
12 more appropriate in a motion to dismiss and  
13 Plaintiff will not argue her claims in this Reply.  
14 Verizon is free to file a motion to dismiss or a  
15 motion for summary judgment after the First  
16 Amended Complaint has been filed, giving Plaintiff  
17 sufficient time to respond appropriately.

18 P. Reply (doc. 266) at 3. The Court finds Baker's postponement of  
19 her response to Verizon's arguments regarding futility and undue  
20 delay to be detrimental to her motion.

21 Baker's motion to amend is filed three years after she filed  
22 her original Complaint. Her request comes after Verizon filed its  
23 motion for summary judgment and after discovery began between the  
24 parties. However, Baker's motion and proposed First Amended  
25 Complaint contain no newly discovered information or argument that  
26 explains such a delay. The Ninth Circuit has noted that "a  
27 district court does not 'abuse its discretion in denying a motion  
28 to amend a complaint...when the movant presented no new facts but  
only 'new theories' and 'provided no satisfactory explanation for  
his failure to fully develop his contentions originally.'" Nunes,  
375 F.3d at 808.

1       Moreover, in the absence of any counter argument by Baker, the  
2 Court finds Verizon's contentions concerning the futility of  
3 Baker's proposed additional claims to be convincing. "Futility  
4 alone can justify the denial of a motion for leave to amend." Id.  
5 Thus, the Court shall deny Baker's motion to amend in regard to her  
6 additional proposed claims against Verizon.

7           **B. Verizon's Motion for Summary Judgment**

8               **1. Standard of Review**

9       To grant summary judgment, the court must determine that the  
10 record before it contains "no genuine issue as to any material  
11 fact" and, thus, "that the moving party is entitled to judgment as  
12 a matter of law." Fed.R.Civ.P. 56(c). In determining whether to  
13 grant summary judgment, the court will view the facts and  
14 inferences from these facts in the light most favorable to the  
15 nonmoving party. See Matsushita Elec. Co. v. Zenith Radio Corp.,  
16 475 U.S. 574, 587 (1986).

17       The mere existence of some alleged factual dispute between the  
18 parties will not defeat an otherwise properly supported motion for  
19 summary judgment; the requirement is that there be no genuine issue  
20 of material fact. See Anderson v. Liberty Lobby, Inc., 477 U.S.  
21 242, 247-48 (1986). A material fact is any factual dispute that  
22 might affect the outcome of the case under the governing  
23 substantive law. Id. at 248. A factual dispute is genuine if the  
24 evidence is such that a reasonable jury could resolve the dispute  
25 in favor of the nonmoving party. Id.

26       A party opposing a motion for summary judgment cannot rest  
27 upon mere allegations or denials in the pleadings or papers, but  
28 instead must set forth specific facts demonstrating a genuine issue

1 for trial. See id. at 250. Finally, if the nonmoving party's  
2 evidence is merely colorable or is not significantly probative, a  
3 court may grant summary judgment. See, e.g., California  
4 Architectural Build. Prods., Inc. v. Franciscan Ceramics, 818 F.2d  
5 1466, 1468 (9th Cir. 1987).

## 6 **2. Analysis**

7 Verizon argues that summary judgment should be granted in its  
8 favor on all of Baker's claims against Verizon. Mot. (doc. 237) at  
9 1-2. First, Verizon asserts that, because Baker failed to timely  
10 respond to its requests for admission, she automatically admits  
11 numerous statements that indicate that she was not wronged or  
12 damaged by Verizon. Id. at 2-5. Second, Verizon asserts that,  
13 under 28 U.S.C. § 1332, this Court lacks subject matter  
14 jurisdiction over Baker's claims. Id. at 5. Specifically, Verizon  
15 notes that Baker admitted in her answers to its interrogatories  
16 that she is only seeking to recover compensatory damages in the  
17 amount of \$25,000; thus, failing to reach the requisite amount of  
18 over \$75,000. Id. at 5-6. Additionally, Verizon notes that Baker  
19 has failed to raise any claims that would give rise to federal  
20 question jurisdiction under 28 U.S.C. § 1331. Id. at 6-7. Third,  
21 Verizon asserts that Baker has failed to state a valid fraud claim,  
22 as she has not alleged sufficient facts to satisfy the elements of  
23 such a claim. Mot. (doc. 237) 7-9. Fourth, Verizon contends that  
24 Baker's "extortion" claim is not a cognizable claim, as Baker fails  
25 to cite any federal or state authority as a source for her claim.  
26 Id. at 9. Verizon notes that Arizona does not recognize a common  
27 law civil cause of action for extortion, nor does a statute exist.  
28 Id. at 10. Fifth, Verizon asserts that the damages for "mental

1 anguish" and "loss of income" that Baker seeks are not recoverable  
2 in fraud. Id. at 10-11. Finally, Verizon requests an award of  
3 reasonable attorney's fees and costs incurred in defending this  
4 claim. Id. at 12.

5 In her response, Baker fails to respond to any of Verizon's  
6 arguments, except for the issues regarding her admissions and  
7 Verizon's request for fees. P. Resp. (doc. 251). Although Baker  
8 admits that her responses to Verizon's request for admissions were  
9 filed one day after the deadline, she requests that the Court allow  
10 her to withdraw the admissions. Id. at 1, 2-3. In any event,  
11 Baker makes no arguments in opposition to Verizon's assertions  
12 concerning the viability of Baker's fraud and "extortion" claims,  
13 and the Court's jurisdiction over them. Instead, Baker argues that  
14 the Court retains jurisdiction over the "FDCPA claims" that she  
15 added in her proposed First Amended Complaint. Id. at 6-7.

16 A party opposing a motion for summary judgment cannot rest  
17 upon mere allegations or denials in the pleadings or papers, but  
18 instead must set forth specific facts demonstrating a genuine issue  
19 for trial. Anderson, 477 U.S. at 250. If the nonmoving party's  
20 evidence is merely colorable or is not significantly probative, a  
21 court may grant summary judgment. See, e.g., California  
22 Architectural Build. Prods., Inc. v. Franciscan Ceramics, 818 F.2d  
23 1466, 1468 (9th Cir. 1987). Thus, the Court shall grant Verizon's  
24 motion for summary judgment on Baker's fraud and "extortion"  
25 claims. However, the Court shall deny the motion in regard to  
26 Verizon's request for attorney's fees, as the request was not  
27 properly filed in accordance with Local Rule 54.2.

28 Therefore,

1 IT IS ORDERED that Baker's motion requesting leave to file a  
2 First Amended Complaint (doc. 248) is DENIED in regard to her  
3 additional proposed claims against Verizon.

4 IT IS FURTHER ORDERED that Verizon's motion for summary  
5 judgment (doc. 237) is GRANTED in part and DENIED in part. It is  
6 denied as to Verizon's request for attorney's fees but granted in  
7 all other respects.

8 DATED this 16<sup>th</sup> day of May, 2006.

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13 Robert C. Broomfield  
14 Senior United States District Judge

15 Copies to counsel of record and Plaintiff, pro se  
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